

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-10944-RGS

\_\_\_\_\_  
THOMAS GLEASON )

vs. )

SALLY A. GLEASON, ET AL. )

**PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE**  
**PURSUANT TO FED. R. CIV. P. 41(a)(2)**

NOW COMES Thomas Gleason ("Plaintiff"), and hereby moves for dismissal of the above captioned action without prejudice pursuant to F.R.C.P. 41(a)(2). In furtherance of this motion, Plaintiff states that in the past ten days, new evidence has been produced which was previously unavailable which suggests two possible alternatives to suicide regarding the disappearance of the Plaintiffs wife.

According to Rule 41 (a)(1), Plaintiff does not need to obtain the assent from the defendants who have not yet filed an Answer. The three Answers Plaintiff has received essentially deny all Plaintiffs allegations and assert boilerplate affirmative defenses. Plaintiff requested assent to this Motion from the three answering parties, but only the attorney for defendant Fidelity Investments assented. Defendants Highmark Life Insurance Company and Metropolitan Life Insurance Company have indicated that they will object to this motion. No mandatory disclosures have been made by any of the parties, no other Motions have been filed, and no discovery has been conducted. Furthermore, no counterclaims have been asserted against Plaintiff. Given the timeliness of this motion and the lack of legal prejudice that would result to any of the defendants, Plaintiff requests

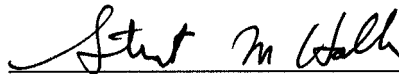
that dismissal as to all claims asserted against all defendants be granted without prejudice.

In light of the present uncertainty regarding the fate of Plaintiff's wife, dismissal without prejudice represents the most equitable disposition of this matter. The surfacing of new evidence was not caused by any fault or lack of diligence on the part of Plaintiff. A strong likelihood remains, that Plaintiff's wife did in fact commit suicide. Requiring Plaintiff to proceed with the Complaint at this time or granting dismissal with prejudice would bar the Plaintiff from any rights to life insurance proceeds that may arise in the future in the event that new evidence suggests that she is deceased and by means other than suicide.

In the event that at some later time Plaintiff decides to initiate litigation regarding the disappearance of his wife, Plaintiff agrees to notify all defendants and Plaintiff will not claim any preclusive effect as a result of this dismissal.

WHEREFORE, the undersigned requests this Honorable Court to permit him to withdraw his Complaint without prejudice.

Respectfully submitted,  
THOMAS GLEASON  
By his attorney,



Stuart M. Holber, Esq.  
Phillips, Gerstein, Holber & Channen, LLP  
25 Kenoza Avenue  
Haverhill, MA 01830  
(978) 374-1131

Dated: November 31, 2005.

CERTIFICATE OF SERVICE

I, Stuart M. Holber, Esq., do hereby certify that a copy of the foregoing Motion, the accompanying memorandum in support of this Motion, and the Proposed Order have been sent via first class mail postage prepaid, to the following list:

Dated: November 3~~yl~~, 2005.

'4!zt A k104  
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70 Butler Street  
Salem, NH 03079

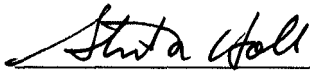
Merrimack Valley Federal Credit Union  
Attn: Legal Department  
1475 Osgood Street  
No. Andover, MA 01845

Kevin Rembis  
5 Kayla Avenue  
Salem, NH 03079

LOCAL RULES 7.1(A)(2) CERTIFICATION

Counsel hereby certifies that the Attorneys involved in the matter have conferred and attempted in good faith to resolve this matter or narrow the issue.

Date: 10/11/05 Bd.C

  
Stuart M. Holber, Esq.

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